

ESTTA Tracking number: **ESTTA418959**

Filing date: **07/11/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184529
Party	Defendant Global Tissue Group, Inc.
Correspondence Address	R. GLENN SCHROEDER HOFFMAN & BARON, LLP 6900 JERICO TURNPIKE SYOSSET, NY 11791 UNITED STATES gschroeder@hoffmannbaron.com
Submission	Other Motions/Papers
Filer's Name	R. Glenn Schroeder
Filer's e-mail	rgsdocket@hoffmannbaron.com
Signature	/r. glenn schroeder/
Date	07/11/2011
Attachments	Disclosure of Expert Testimony.pdf ( 35 pages )(1918224 bytes )

GEORGIA-PACIFIC CONSUMER  
PRODUCTS LP,

Opposition No.: 91184529

GLOBAL TISSUE GROUP, INC.

Applicant.

Pursuant to the Board's Order of June 10, 2011, Applicant Global Tissue Group, Inc. hereby notifies the Board of its intention to employ a rebuttal expert in this proceeding. A copy of the rebuttal report is attached hereto as Exhibit A, and has been served upon Opposer in accordance with the Trademark Rules.

Respectfully submitted,

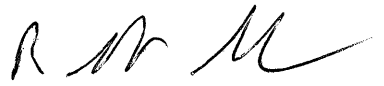
R. H. H.

Hoffmann & Baron, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
Telephone: (516) 822-3550  
Facsimile: (516) 822-3582  
choffmann@hoffmannbaron.com  
gschroeder@hoffmannbaron.com  
Attorneys for Applicant  
Global Tissue Group, Inc

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date, July 11, 2011, a copy of the foregoing DISCLOSURE OF EXPERT TESTIMONY was served upon the Opposer, by email and by U.S. mail, to Opposer's current identified counsel, as set forth below:

Charlene R. Marino, Esq.  
Kilpatrick Townsend & Stockton, LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, Georgia 30309  
cmarino@kilpatrickstockton.com

A handwritten signature in black ink, appearing to read 'R. Glenn Schroeder', written over a horizontal line.

R. Glenn Schroeder

## **EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GEORGIA-PACIFIC CONSUMER PRODUCTS LP,

Opposer,

v.

GLOBAL TISSUE GROUP, INC.,

Applicant.

Opposition No.: 91184529

Serial No.: 77/364, 616

**DECLARATION OF SARAH BUTLER**

# **DECLARATION OF SARAH BUTLER**

In connection with

GEORGIA-PACIFIC CONSUMER PRODUCTS LP v.  
GLOBAL TISSUE GROUP, INC.

## **Table of Contents**

I.	QUALIFICATIONS .....	3
II.	DOCUMENTS REVIEWED .....	4
III.	ASSIGNMENT AND SUMMARY OF OPINIONS.....	4
IV.	BACKGROUND .....	6
V.	DESCRIPTION OF THE FORD SURVEY .....	7
VI.	THE FORD SURVEY DOES NOT MEASURE SECONDARY MEANING .....	8
VII.	THE FORD STUDY USES AN INAPPROPRIATE CONTROL .....	11
VIII.	THE FORD STUDY HAS CODING ERRORS.....	12
IX.	THE FORD STUDY IS LIMITED TO “QUILTED” BATH TISSUE .....	13
X.	CONCLUSIONS.....	13

## **I. QUALIFICATIONS**

1. I am a Senior Consultant at NERA Economic Consulting (“NERA”) where I participate in the Intellectual Property, Antitrust, Product Liability, and Labor Practices. My business address is 1 Front Street, San Francisco, CA 94111. NERA is a firm providing expert economic, financial, statistical, and survey research analysis.

2. Among my responsibilities, I conduct survey research, market analysis and sampling analysis on a wide range of topics regarding business and consumer decision making, consumer choice, and consumer behavior. In the course of my career, I have conducted numerous studies for leading corporations and government agencies involving research on consumers, employees, and businesses. My work has been included in numerous lawsuits involving issues of trademark and trade dress, false advertising, secondary meaning, as well as antitrust and employment related litigation. I am a member of the American Association of Public Opinion Research, the American Marketing Association, the American Statistical Society, the Intellectual Property Section of the American Bar Association and the International Trademark Association (INTA).

3. I have also worked as a market researcher conducting focus groups, in-depth interviews and surveys of physicians and patients. I have worked as an independent consultant conducting research for the Department of Environment and Rural Affairs in the United Kingdom. I have taught courses focused on or involving research methodologies in both the United States and Europe. I hold a Master’s Degree from Trinity College, Dublin and another Master’s Degree from Temple University.

4. I have substantial experience conducting and using surveys and focus groups to measure consumer opinions and behaviors regarding products and services including purchase

processes, branding and positioning, market segmentation, product attributes, new product research, and communications strategies. During my career in academic and commercial research, I have personally facilitated focus groups and conducted in-depth interviews. A copy of my current resume and testimony in the last five years is attached as Exhibit A.

5. No part of NERA's compensation depends on the outcome of this filing.

## **II. DOCUMENTS REVIEWED**

6. As part of my work, I reviewed the Declaration of Gerald L. Ford and relevant appendices.<sup>1</sup> A list of the specific materials I reviewed can be found in Exhibit B.

## **III. ASSIGNMENT AND SUMMARY OF OPINIONS**

7. I was retained by counsel to determine whether the conclusions in Dr. Ford's report are reliable and whether the results of his study can be used to support Georgia-Pacific's claim "that Georgia-Pacific's Family of QUILTED marks has secondary meaning."<sup>2</sup> Specifically, I was asked to evaluate Dr. Ford's claim that,

"the results of the survey conducted in this matter establish the necessary threshold to support a finding of secondary meaning or acquired distinctiveness for Georgia-Pacific's 'Quilted' mark for bath tissue. The results of the survey evidence that a substantial segment of the relevant universe associate 'Quilted' with the named source, Northern, or a sole, yet anonymous source."<sup>3</sup>

8. I understand that Dr. Ford conducted a mall-intercept survey. His survey involved asking qualified respondents a series of questions about their brand association for bath tissue after hearing the word "Quilted". Dr. Ford submitted a report and associated materials based on this survey.

---

<sup>1</sup> Declaration of Dr. Gerald L. Ford, dated November 18<sup>th</sup>, 2010 (hereafter "Ford Report").

<sup>2</sup> Opposer's Motion to Reopen Time for Expert Disclosures and For Leave to Present Expert Testimony on Applicant's Counterclaims, dated November 19, 2010, p. 1.

<sup>3</sup> Ford Report, p. 13.



9. Based on my review of Dr. Ford's survey, I conclude that his results do not provide a reliable estimate of the percent of consumers who associate the word "Quilted" with Quilted Northern bath tissue or with a single, unnamed source. Dr. Ford's questionnaire is not designed to measure secondary meaning and his analysis of the results is inappropriate given the questions he has asked. While his results may indicate that consumers are familiar with the product named "Quilted Northern" and think of Northern when offered the word "Quilted", the Ford study does not provide evidence sufficient to determine whether Northern is the only brand associated with the word "Quilted". Dr. Ford's study tests consumers' ability to name a product called "Quilted Northern", but does not provide evidence that "Quilted" is anything more than a descriptive term for consumers.

10. In addition to the errors in design and analysis, there are other problems with the Ford study. The Ford study uses a control condition which is inappropriate and cannot be used to filter out or determine the extent to which respondents may have guessed or were influenced by elements of the research not meant to be tested. There are also a number of coding errors which affect Dr. Ford's calculations. These errors, in addition to the overall design flaw, render the Ford study unreliable.

11. Finally, aside from the unreliability of Dr. Ford's results, it is important to note that his study was not designed to test a family of marks comprised of the "QUILT formative" as suggested by the Opposer in this matter.<sup>4</sup> Dr. Ford's study tested one word, "Quilted", in one specific product category, bath tissue. These results, even if reliable, could not be used to assert that all the variations of "Quilt" suggested by Opposer have secondary meaning nor could the results be used to assert that "Quilted" has secondary meaning in consumer paper products other

---

<sup>4</sup> Opposer's Motion, p. 1.

than bath tissue. The results of the Ford study, even if found reliable are limited to the mark tested in the bath tissue market.

12. My concerns with the Ford study are described in detail below.

#### **IV. BACKGROUND**

13. I understand that Global Tissue Group, Inc. (hereafter “Global Tissue”) filed an intent-to-use application for the mark “Quilty” for “consumer and industrial paper products, namely, facial tissue, napkins, towels and bathroom tissues” on January 4<sup>th</sup>, 2008.<sup>5</sup>

14. In response to this application, it is my understanding that Georgia-Pacific Consumer Products (hereafter “Georgia-Pacific”) filed an opposition to the Global Tissue application on June 11<sup>th</sup>, 2008. In this opposition, Georgia-Pacific claimed that,

“Registration of Applicant’s Mark will injure Opposer because Applicant’s Mark, so resembles Opposer’s QUILT Marks as to create confusion, mistake and/or deception. Persons familiar with Opposer’s QUILT Marks are likely to believe erroneously that Applicant’s goods are offered by Opposer or are authorized, licensed, endorsed, or sponsored by Opposer, and registration of Applicant’s mark would be inconsistent with Opposer’s rights in Opposer’s QUILT marks. Registration of Applicant’s Mark will also injure Opposer because Applicant’s mark is likely to dilute the distinctiveness of Opposer’s QUILT Marks, which are famous.”<sup>6</sup>

15. On March 23<sup>rd</sup>, 2010 Global Tissue filed an answer and a set of counterclaims. In its motion, Global Tissue argued that the words “Quilt” and “Quilted” are generic or descriptive terms and that a number of other marks using “Quilt” exist for other consumer paper products.<sup>7</sup>

16. Finally, I understand that on November 19<sup>th</sup>, 2010 Georgia-Pacific filed a motion to offer the expert report of Dr. Ford.<sup>8</sup>

---

<sup>5</sup> See Exhibit C, pdf of Application.

<sup>6</sup> Notice of Opposition, dated June 11, 2008, p. 6.

<sup>7</sup> First Amended Answer and Counterclaims, dated March 23, 2010, p. 4.

## **V. DESCRIPTION OF THE FORD SURVEY**

17. Dr. Ford conducted a study of 432 consumers in eight shopping malls located across the United States. Qualified respondents were men and women over the age of 18 who were the primary grocery shopper or who shared shopping responsibilities equally with another household member and had purchased bath tissue in the past month or planned on doing so in the next month.

18. Qualified respondents were brought to the interviewing facility and were asked the following:

Now, thinking about bath tissue...do you associate...Quilted...with any particular brand or brands of bath tissue?

Respondents who said yes were then asked:

What brand or brands of bath tissue?

Those who could not name a brand were asked:

Do you associate...Quilted...with one brand or more than one brand of bath tissue?<sup>9</sup>

19. A total of 216 respondents were asked a survey version using “Quilted”, the remaining respondents were asked the control version of the survey which used the same questions but substituted the word “Flushable” for “Quilted”.

20. Dr. Ford reported that 59 respondents associated the word “Quilted” with Northern brand bath tissue and an additional six associated “Quilted” with one brand but could not identify a specific brand. In the control condition, Dr. Ford identified three respondents who said

---

<sup>8</sup> Opposer’s Motion.

<sup>9</sup> Ford Report, Exhibit A.

Northern was associated with “Flushable”. Using these results, Dr. Ford calculated that 28.7 percent of respondents associate “Quilted” with Northern bath tissue or with a single source.<sup>10</sup>

## **VI. THE FORD SURVEY DOES NOT MEASURE SECONDARY MEANING**

21. Dr. Ford’s study does not appropriately measure secondary meaning. His research may reveal which brand of bath tissue consumers first associate upon hearing the word “Quilted” or which brand of bath tissue they themselves use, but the results of his survey cannot be used to demonstrate that a significant proportion of consumers identify “Quilted” with a *single* source. A proper secondary meaning study must show not only that consumers think of a particular brand when exposed to the mark in question, but also must show that consumers identify the mark with a *single* source. As McCarthy points out,

A survey should reveal that respondents use the designation or trade dress to identify a single source, not that the party seeking trademark rights is listed as the first among several sources with which respondents associate the designation or trade dress.<sup>11</sup>

22. Dr. Ford claims to find 30 percent secondary meaning in his test group, 27 percent from individuals who name Quilted Northern in response to the question which asks, “what brand or brands of bath tissue”. But, this question does not directly ask respondents whether they associate “Quilted” with a single brand or source of bath tissue. Instead, Dr. Ford assumes that respondents who answered Northern associated no other brands with “Quilted”. This assumption is problematic.

23. It is well established in the literature on survey research that respondents have a tendency to “satisfice”. Satisficing means that respondents offer only as much information as

---

<sup>10</sup> Ford Report, p. 12 – 13.

<sup>11</sup> See McCarthy, T. 2006. *McCarthy on Trademarks and Unfair Competition 4<sup>th</sup> Edition*, 15:42.

necessary to answer the question and are unlikely to consider or offer all possible responses.<sup>12</sup> In the Ford study, respondents were unlikely to make the effort necessary to think of all brands of bath tissue they may have associated with “Quilted”. There are several reasons to believe that as designed, the Ford study elicited only top of mind answer from its respondents.

24. First, the Ford study used an open-ended question (“which brand or brands”), a question format which requires the respondent to generate the appropriate answer or set of answers independently. But relying on this question format to evaluate secondary meaning is problematic, as an open-ended question is likely to elicit the first, or top of mind response and not all possible responses that may actually be appropriate for the respondent. As Diamond points out, “Open-ended questions are more appropriate when the survey is attempting to gauge what comes first to a respondent’s mind”.<sup>13</sup> The Ford study counted those who offered Quilted Northern brand bath tissue in response to the open-ended question as having secondary meaning, but given the question format it is likely that some of these respondents would have listed other brands had the question been posed differently.

25. Second, the Ford study did include a close-ended question that directly asked respondents about secondary meaning, but this question was only answered by eight respondents. Respondents who named a brand were never asked directly whether they associated “Quilted” with more than one brand.<sup>14</sup>

26. Third, the Ford study did not include any follow up questions asking respondents why they said a particular brand. A standard question like “what makes you say that” would have

---

<sup>12</sup> See Krosnick, J. 1991. “Response Strategies for Coping with the Cognitive Demands of Attitude Measures in Surveys” in *Applied Cognitive Psychology*, Vol.5 213 – 236.

<sup>13</sup> See Diamond, S. 2000. “Reference Guide on Survey Research” in the *Reference Manual on Scientific Evidence Second Edition*, Federal Judicial Center, p. 253.

<sup>14</sup> Respondents who said they had no association were also not asked this question.

provided valuable information and would have helped understand whether the consumer actually associated “Quilted” with a single source or if they instead were simply offering a well-known brand as a first response.<sup>15</sup>

27. The likelihood that respondents satisficed and simply offered a single brand, regardless of the brand being offered, is supported by an examination of the survey results. In Dr. Ford’s survey, only a small number of respondents associate “Quilted” with more than one brand. As shown below in Table 1, 84 percent of all respondents in the test condition who mentioned a brand offered only one brand when asked if they associate “Quilted” with bath tissue. Only 16 percent of respondents, or 21 individuals offered more than one brand.<sup>16</sup>

**Table 1: Percent Mentioning Only One Brand in Test Condition**

<b>Number of Brands Mentioned</b>	<b>Count</b>	<b>Percent</b>
<b>Mention ONE Brand</b>	<b>114</b>	<b>84%</b>
<b>Mention MORE than ONE Brand</b>	<b>21</b>	<b>16%</b>
<b>Total Mentioning a Brand</b>	<b>135</b>	<b>100%</b>

28. This finding becomes even more important when we examine the rate at which respondents offer a single brand that is not Northern. In the Ford study, a total of 57 respondents said Northern is associated with the word “Quilted”. A total of 52 respondents named a single brand, other than Northern. Therefore, as shown in Table 2 there are only five more respondents who say Northern as opposed to some other brand when asked if they associate “Quilted” with a brand of bath tissue. In other words, the difference between consumers who associate “Quilted” with Quilted Northern and “Quilted” with some other brand is two percent (2%). This small difference between the percent of consumers which associate Northern with “Quilted” and the

<sup>15</sup> McCarthy, 32:178, “Sometimes, the most illuminating and probative parts of a survey are not the numbers and percentages generated by the responses, but the verbatim accounts of the responses. The respondents’ verbatim responses to “why” question may provide a window into consumer thought processes in a way mere statistical data cannot”.

<sup>16</sup> As discussed in Section VII below there are some coding errors in Dr. Ford’s analysis which have affected his results. I have corrected these errors in the counts and table shown.

percent of consumers who associate some other single brand with “Quilted” does not suggest that “a substantial segment of the relevant universe associate ‘Quilted’ with the name source, Northern”.<sup>17</sup>

**Table 2: Percent Mentioning Only One Brand by Brand in Test Condition**

<b>Brand Mentioned</b>	<b>Count</b>	<b>Percent</b>
<b>Northern</b>	<b>57</b>	<b>26%</b>
<b>Other Brand</b>	<b>52</b>	<b>24%</b>
<b>Difference</b>	<b>5</b>	<b>2%</b>

29. In his test condition, Dr. Ford relies on the results from a question format that was likely to yield top of mind responses. The overwhelming majority of respondents in his survey were never asked directly whether they associate “Quilted” with one brand or more than one brand. Instead, Dr. Ford is forced to assume that individuals who offered Quilted Northern in response to the brand question would not have identified any other brands. But this assumption is unwarranted because it is likely that respondents simply offered a top of mind response. The results indicate that when respondents named a brand, most offered only one brand. Moreover, only a net of five respondents thought that “Quilted” was associated with Quilted Northern as opposed to some other named brand.

## **VII. THE FORD STUDY USES AN INAPPROPRIATE CONTROL**

30. In secondary meaning studies, an appropriate control can often help to determine the extent to which respondents are simply guessing or naming a well known brand. Dr. Ford’s control does not provide any means by which to measure how many respondents in the test condition were simply offering Quilted Northern because it is a well-known brand or because they were responding to some aspect of the survey other than the “Quilted” stimulus. This is in part

---

<sup>17</sup> Ford Report, p. 13.

because the control questionnaire suffers from the same design flaw and was therefore just as likely to elicit only top of mind responses. As shown in Table 3 below, 69 percent of respondents who mention a brand in the control condition say only one brand and only 31 percent offer more than one brand. This is particularly surprising given that all bath tissue is “flushable”, the control word used by Dr. Ford.

**Table 3: Percent Mentioning Only One Brand in Control Condition**

Number of Brands Mentioned	Count	Percent
Mention ONE Brand	68	69%
MORE than ONE Brand	31	31%
Total Mentioning a Brand	99	100%

31. The fact that Dr. Ford’s control stimulus “Flushable” is a feature of all bath tissue means it is not an appropriate control for “Quilted”. The purpose of a control is to filter out “mismeasurement error”<sup>18</sup> or associations or responses that are unrelated to the stimulus. Instead of selecting a similarly descriptive word, like “soft”, “woven”, or “plush” that could potentially distinguish one brand of bath tissue from another, Dr. Ford uses a word that describes the overall category of goods; i.e. all bath tissue is flushable.

## **VIII. THE FORD STUDY HAS CODING ERRORS**

32. There are a number of coding errors in Dr. Ford’s study which affect his results. First, Dr. Ford has two respondents counted as saying only Northern brand, but who actually appear to be naming two brands. Respondent 1812 and Respondent 1822 both mention “bears”, the characters used by Charmin brand bath tissue, as well as saying Northern.<sup>19</sup>

<sup>18</sup> Ford Report, p. 6.

<sup>19</sup> See, [http://www.charmin.com/en\\_US/index.php](http://www.charmin.com/en_US/index.php). An additional respondent, 1306 states, “Northern, I think, is quilted. I got Charmin, and I don’t know if that’s quilted or not”. I have left this respondent as coded by Dr. Ford in my counts. One further respondent is counted as offering a single brand but not knowing the name. Respondent 1223 stated “The one with bears. I don’t know the name”. I have coded this individual as identifying a particular brand.



33. Dr. Ford makes another coding error when he counts two respondents who say “Charmin Quilted” as individuals who are saying both Northern and some other brand. There is nothing in these responses to indicate that these respondents meant Northern and Charmin; the answers simply indicate that respondents associate “Quilted” with Charmin.

34. Dr. Ford has coded these respondents incorrectly and without follow up questions he cannot assume to know what these respondents intended.

## **IX. THE FORD STUDY IS LIMITED TO “QUILTED” BATH TISSUE**

35. Dr. Ford has not tested a family of marks nor has he tested the extent to which “Quilted” or any variant thereof has secondary meaning in markets beyond bath tissue. In fact, he specifically states in his report introduction that, “the survey reported herein was designed to measure the level or degree, if any, to which the ‘Quilted’ mark is associated with bath tissue emanating from the named source ‘Northern’ or a sole, yet anonymous, source”.<sup>20</sup> Dr. Ford makes no mention of the family of marks described by the Opposer, Georgia-Pacific, nor does he mention the broader market of consumer paper products that the Applicant has sought for its mark. Dr. Ford’s results, to the extent that they are reliable at all, can only be said to provide information for the word “Quilted” in the bath tissue market.

## **X. CONCLUSIONS**

36. Dr. Ford’s survey does not provide reliable evidence as to the secondary meaning associated with the word “Quilted”. His questionnaire structure means that the majority of his respondents with any association likely offered the first brand that came to mind. While such a result may indicate that consumers know the Quilted Northern brand, these data cannot be used to

---

<sup>20</sup> Ford Report, p. 1 – 2.

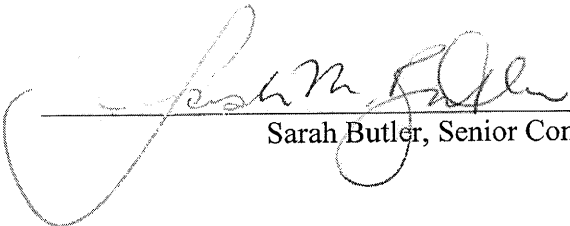
infer secondary meaning. Only eight respondents were asked a direct question about secondary meaning. For those who offered a single brand, there is no way to determine whether the named brand was intended to be a single source or was simply the first brand that came to mind upon hearing “Quilted”.

37. In addition, Dr. Ford’s control condition does not provide a reliable method by which to eliminate measurement error. The control condition suffers from the same design flaw as found in the test condition and also uses a word that describes all bath tissue.

38. Finally, to the extent that they are reliable at all, Dr. Ford’s survey results provide no information about other variations of the word “Quilted” as listed by the Opposer and do not address the extent to which consumers have any secondary meaning or associations with “Quilted” in the larger market of consumer paper products.

39. My opinions and conclusions as expressed in this report are to a reasonable degree of professional certainty. My work is ongoing and my opinions will continue to be informed by any additional material that becomes available to me.

I declare under penalty of perjury that the foregoing is true and correct. July 8<sup>th</sup>, 2011.

  
\_\_\_\_\_  
Sarah Butler, Senior Consultant

# Exhibit A

## **SARAH BUTLER, M.A.**

### **SENIOR CONSULTANT**

Ms. Butler is an expert in survey research, market research, sampling, and statistical analysis. She has applied her expertise in a wide range of litigation and strategic business cases. Her litigation and project experience includes survey research, market research, the design of samples, and the statistical and demographic analysis of large data files in a number of areas including:

#### Intellectual Property

- Trademark and Trade Dress Infringement: Design, analysis, and critique of surveys used to measure consumer confusion, secondary meaning, and dilution in trademark and trade design infringement cases.
- False and Misleading Advertising: Design, analysis and critique of surveys used to measure consumer perceptions and the materiality of advertising claims.
- Patent Infringement: Sample designs and surveys to the value of patented feature of a larger product and to establish rates at which infringing material exist in populations of products.
- Copyright infringement: Sampling plans and analysis of the rates of infringing material in populations of shared information (such as through websites or other sharing medium).

#### Antitrust

- Design, analysis and critique of surveys and other market research used as evidence of consumer purchasing and switching behavior in the areas of CPG, entertainment, automobiles, public transportation, sports and consumer electronics.
- Design, analysis and critique of surveys used to demonstrate consumer price sensitivities and willingness to pay.

#### Mass Torts/Class Actions

- Conduct surveys and design samples providing evidence on issues of commonality and consumers' awareness of key documents or facts and reliance on representations.
- Analyze large databases of claims files to generate invoices, estimate future liabilities and calculate policy shares for insurer liabilities in asbestos, tobacco and pharmaceuticals.
- Design, analyze and critique surveys and sampling plans used to evaluate employment and promotion records. Review and design surveys for purposes of estimating key facts in labor class actions including time to complete activities, exempt/nonexempt activities, and meal and rest break issues.

Prior to joining NERA, Ms. Butler worked in market research, conducting survey research, focus groups and in-depth interviews. She has recently completed an article for the ABA Trial Practice Newsletter and has written on trademark infringement and the internet and surveys in litigation.

## Education

### **Temple University**

ABD Applied Sociology, coursework, exams and dissertation proposal complete (2005).

### **Temple University**

M.A. Sociology, (2000).

### **Trinity College, Dublin Ireland**

M.Phil. (1997).

### **Wellesley College**

B.A. Sociology and History (with honors). (1995).

## Professional Experience

July 2006

### **Senior Consultant**

NERA Economic Consulting  
San Francisco, California, USA

Oct 2005 – May 2006

### **Special Consultant**

NERA Economic Consulting  
London, England

Jan 2003 – Oct 2005	<b>Senior Analyst - Consultant</b> NERA Economic Consulting Philadelphia, Pennsylvania, USA
2002 - 2003	<b>Consultant</b> Integrated Marketing Associates Bryn Mawr, PA, USA
Oct 1998 - Jan 2002	<b>Research Associate – Analyst</b> NERA Economic Consulting Philadelphia, Pennsylvania, USA
Sept 1998 – May 2003	<b>Adjunct Professor</b> Temple University Philadelphia, Pennsylvania, USA
Jan 1997 – Feb 1998	<b>Manager of Member Research</b> Society for Neuroscience Washington DC, USA

## Expert Analysis and Testimony

CHEK-MED Systems, Inc.\* vs. PMT Corp. and Permark, Inc. United States District Court, Middle District of Pennsylvania. Design and implement survey for evidence in false and misleading advertising claims. [Expert Report: June 22<sup>nd</sup>, 2011]

National Association of Independent Housing Professionals, Inc.\* vs. Board of Governors of the Federal Reserve System. et. al. United States District Court, District of Columbia. Expert report on issues of false and misleading advertising and materiality claims. [Expert Report: March 24<sup>th</sup>, 2011]

Sciele Pharma, Inc. vs. Brookstone Pharmaceuticals, L.L.C. a/k/a Acella Pharmaceuticals\*, United States District Court, Northern District of Georgia, Atlanta Division. Expert report on issues of false advertising and survey used as evidence of misleading and materiality claims. [Expert Report: September 22<sup>nd</sup>, 2010. Deposition: December 1<sup>st</sup>, 2010]

PamLab, L.L.C. and Metabolite Laboratories, Inc. vs. Brookstone Pharmaceuticals, L.L.C. a/k/a Acella Pharmaceuticals\*, United States District Court, Eastern District of Louisiana. Expert report on issues of false advertising and survey used as evidence of misleading and material claims. [Expert Report: September 14<sup>th</sup>, 2010. Deposition: September 29<sup>th</sup>, 2010]

Confidential client. Design and implement survey used to determine market shares and price elasticity for brands of hair relaxers [2010].

DirecTV, Inc.\* vs. Elephant Group, Saveology.com et al., United States District Court, Central District of California, Western Division. Consulting expert on likelihood of confusion in a trademark dispute over sale of trademarks as keywords. [2010]

Confidential client. Design and implement survey used to establish family of marks claim for not-for-profit agency [2010].

ConsumerInfo.com vs. J Willims and Edirect\*, United States District Court, Central District of California, Western Division. Design and implement survey testing confusion and misleading advertising in a trademark dispute [2010].

Rosetta Stone LTD.\* vs. Google, Inc. United States District Court, Eastern District of Virginia, Alexandra Division. Assist in design of a likelihood of confusion survey with regard to trademark or branded keyword searches using the Google search engine. [2010]

Confidential client. Advise and consult on rebuttal strategies in internet keyword case [2009].

Confidential client. Design and implement research used in false advertising suit for pre-paid international telephone calling cards [2009].

Mary Kay, Inc.\* vs. Amy Weber, Scott Weber, and Touch of Pink Cosmetics, United States District Court, Northern District of Texas, Dallas Division. Consulting expert on likelihood of confusion with regard to sale of branded products on a website [2008].

American Airlines, Inc.\* vs. Google, Inc. United States District Court, Northern District of Texas, Fort Worth Division. Consulting expert in likelihood of confusion with regard to trademark or branded keyword searches using Google [2008].

Rocky Brands, Inc. and Rocky Brands Wholesale, LLC.\* vs. Glen Bratcher, Westwood Footwear and Accessories, LLC and Nantong Hong Yi Wang Shoes Co., LTD., United States District Court, Southern District of Ohio, Eastern Division. Consulting expert on likelihood of confusion with regard to trade dress of footwear [2008].

Jack Branning et al. vs. Apple Computer, Inc.\* Expert analysis on issues of sampling records in a consumer class action. [Testimony before judge, April 2008].

Real Estate Disposition Corporation\* vs. National Home Auction Corporation, United States District Court, Central District of California. Consulting expert report on survey addressing materiality, confusion and misleading advertising [2008].

Faloney et al. vs. Wachovia Bank\*, United States District Court, Eastern District of Pennsylvania. Assist in reports on issues related to common representations allegedly made to consumers in a precertification class action lawsuit [2008].

Redwood Fire and Casualty Insurance Company\* vs. Personnel Plus et al. Superior Court of California, County of Los Angeles. Assist in expert report and sample design to estimate workman's compensation premiums from employee payroll records [2008].

BAA Scottish Airports Market Inquiry, U.K. Competition Commission. Expert review of sample design and survey commissioned by the U.K. Competition Commission to determine price

sensitivities and potential switching to alternative airports for an inquiry into BAA ownership of airports in Glasgow and Edinburgh [2008].

Lulu Enterprises, Inc.\* vs. Hulu, LLC a/k/a N-F Newsite LLC et al. Eastern District of North Carolina, Western Division. Design qualitative research to evaluate consumer confusion between two website names in trademark infringement case [2007].

Federal Trade Commission\* vs. Whole Foods Market, Inc and Wild Oats Markets, Inc., United States District Court, District of Columbia. Assist in preparing rebuttal report on sampling and survey design issues in an antitrust proceeding related to a preliminary injunction to block a proposed merger of Whole Foods Markets Inc and Wild Oats [2007].

Zill et. al vs. Sprint Spectrum L.P. and Wireless Co. LP\*, Superior Court of California, County of Alameda. Review the sampling, survey design, survey implementation, and the use of contingent valuation survey to estimate damages in a wireless communications class action. Design focus group guides and telephone survey to understand consumer perception of handset locking [2007].

CRP Project 4c/d Water Framework Directive Benefits Study Department for Environment, Food and Rural Affairs – Expert member of multistage study involving consulting firms, corporate interests and academics. Survey expert asked to design cognitive interview guides, focus group guides and stated preference questionnaire to test consumer willingness to pay for environmental improvements to water bodies across the U.K. Results used to inform policy decisions on how to comply with EU regulations [2006 – 2007].

Hell's Kitchen Neighborhood Association, Martin Treat, Meta Brunzema, Dana Turner, Daniel Gutman, Rudolf Samandarov and Madison Square Garden, L.P., vs. New York City Department of City Planning, New York City Planning Commission, the City of New York, the City Council of the City of New York, and New York Metropolitan Transportation Authority Supreme Court of the State of New York County of New York\*. Evaluated a survey and submitted an affidavit regarding the construction of a stadium in the Hell's Kitchen section of New York City and the possible resultant traffic congestion [2005].

Energy Brands, Inc. United States Patent and Trademark Office, Trademark Examining Division. Assist in design and conduct of a survey to measure the extent to which consumers perceive Vitamin Water to be a brand name [2005].

Diamond Triumph Auto Glass, Inc. vs. Safelite Glass Corporation\* U.S. District Court, Middle District of Pennsylvania. Consulting expert for the design and implementation of a survey to measure the extent to which consumers are aware of and state a preference for a particular auto glass shop. Assist in sample design and analysis of telephone calls to estimate the extent to which stated glass shop preferences were honored [2004-2005].

AT&T Corp., vs. Microsoft Corporation\* U.S. District Court, Southern District of New York Consulting expert in two surveys conducted to examine consumer usage of various features on their personal computers' operating systems [2004].



V&V Vin and Sprit Aktiebolag, d/b/a the Absolut Company\*, Formansvagen 19, SE-117 97 Stockholm, Sweden vs. Cracovia Brands, Inc., 5632 N.N.W. Highway, Chicago, IL 60646, and Przedsiębiorstwo Polmos Białystok S.A., ul. Elewatorska 20, 15-950 Białystok, Poland U.S. District Court, Northern District of Illinois. Reviewed and critiqued a survey of vodka purchasers that was meant to assess the likelihood of confusion between two brands of vodka [2004].

Real Networks vs. Microsoft Corporation\*. Assist in design and implementation of surveys in the European Union and the United States to understand home computer users' media player preferences [2004].

Metro-Goldwyn-Mayer Pictures, Inc.\* vs. Mark Brown, Beauty Shop LLC, Renegade Pictures, Inc. and C4 Pictures, Inc. U.S. District Court, Central District of California. Assist in design and implementation of a survey to determine movie-goers associations with the work Barbershop and whether or not they could name a movie or identify the plot of a movie with the work Barbershop in the title [2003-2004].

CSC Holdings\*, Inc. vs. Yankees Entertainment and Sports Network, LLC. American Arbitration Association. Assist in design and implementation of three surveys to estimate the sizes of the cable television viewing audiences of New York Yankees games [2003 - 2004].

Nitro Leisure Products, LLC, a Delaware Limited Liability Company, d/b/a Golfballsdirect.com and Second Change vs. Acushnet Company, a Delaware Corporation. U.S. District Court, Southern District of Florida\*. Reviewed and critiqued an internet survey conducted of golfers concerning possible confusion caused by the resale of refurbished golf balls [2003].

Broadway Theater Corp. vs. Buena Vista Pictures Distribution, Inc., Columbia Pictures Distribution, Inc. and Dreamworks SKG. et al.\* State of Connecticut Superior Court. Assist in design and implementation of a survey to examine movie attendance at seven theaters in the New Haven, Connecticut area [2003].

Papa John's Pizza. Assist in design and implementation of a survey to assess the likelihood of consumer confusion between various pizza products [2002].

United States of America vs. Broadcast Music Inc, et. ano.\* U.S. District Court, Southern District of New York. Designed and analyzed a sample of radio music plays to estimate royalty shares for publishing societies [2002].

Eolas Technologies, Inc. v. Microsoft Corporation, Inc.\* U.S. District Court, Illinois Eastern Division. Assist in design and implementation of a survey to measure the impact of altering Internet browser technology [2002].

AM General and General Motors Corporation vs. DaimlerChrysler Corporation\* U.S. District Court, Northern District of Indiana. Assist in design and implementation of a survey to estimate the secondary meaning of Jeep grilles [2002].

Federal Trade Commission v. Libbey, Inc. et al\*. U.S. District Court, District of Columbia. Designed and conducted a sample of glassware products to determine manufacturing country of origin and cost [2001].

\* Retaining party

## **Publications and Presentations**

“Meeting the New Standards for Reasonable Royalties,” (February, 2011) with Mario Lopez. *Law360*.

“Survey Evidence in False Advertising Cases,” (Winter, 2010). *The Antitrust Trial Practice Newsletter*.

“The Use of Surveys in Litigation: Recent Trends,” (April, 2010) with Kent Van Liere. National Economic Research Associates, Inc.

“Emerging Issues in the Use of Surveys in Trademark Infringement on the Web,” with Kent Van Liere. Paper published in the *Advanced Trademark & Advertising Law Conference* proceedings, September 2007, Seattle, WA.

“An Analysis of the Hypothetical Situations in Willingness to Pay Studies.” Paper presented at the July 2006 Thematic Seminar “Quality Criteria in Survey Research,” hosted by World Association for Public Opinion Research, Lake Como, Italy.

“Use of Surveys in Intellectual Property Disputes,” (2005) with Eugene P. Ericksen, in *Economic Approaches to Intellectual Property Policy, Litigation and Management Issues*, Gregory K. Leonard and Lauren J. Stiroh (eds.) National Economic Research Associates, Inc.

“Response Rate Standards: Lessons from the 2004 Presidential Polls.” Paper presented at the 2005 Annual Meeting of American Association of Public Opinion Research, Miami Beach, FL.

“Using Surveys to Determine Damages in Patent Infringement Cases” presented at *Calculating and Proving Patent Damages* workshop, March 2004 Charlotte, NC.

“Using Surveys to Determine Damages in Patent Infringement Cases” presented at *Calculating and Proving Patent Damages* workshop, January 2004 San Diego, CA.

“Using Surveys to Determine Damages in Patent Infringement Cases” presented at *Calculating and Proving Patent Damages* workshop, June 2003, McLean, VA .

## **Professional Associations**

Member, American Association of Public Opinion Research and World Association for Public Opinion Research, Member, American Statistical Association, Member, American Bar

Association, Intellectual Property Section, Member, International Trademark Association (INTA), Reviewer for *Trademark Reporter*, Member, American Marketing Association.

# Exhibit B

### **Documents Reviewed**

1. Declaration of Dr. Gerald L. Ford, dated November 18<sup>th</sup>, 2010
2. Opposer's Motion to Reopen Time for Expert Disclosures and For Leave to Present Expert Testimony on Applicant's Counterclaims, dated November 19, 2010
3. Notice of Opposition, dated June 11, 2008
4. First Amended Answer and Counterclaims, dated March 23, 2010

# Exhibit C

## Trademark/Service Mark Application, Principal Register

Serial Number: 77364616

Filing Date: 01/04/2008

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	77364616
<b>MARK INFORMATION</b>	
*MARK	<u>QUILTY</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	QUILTY
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Global Tissue Group, Inc.
*STREET	1101 Lakeland Avenue
*CITY	Bohemia
*STATE (Required for U.S. applicants)	New York
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	11716
PHONE	631 419 1300
<b>LEGAL ENTITY INFORMATION</b>	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	New York
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
* INTERNATIONAL CLASS	016

<b>*IDENTIFICATION</b>	consumer and industrial paper products, namely facial tissues, napkins, towels and bathroom tissues
<b>FILING BASIS</b>	SECTION 1(b)
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Andrew B. Katz
<b>ATTORNEY DOCKET NUMBER</b>	GTG-007
<b>FIRM NAME</b>	Chernow Katz, LLC
<b>STREET</b>	721 Dresher Road, Suite 1100
<b>CITY</b>	Horsham
<b>STATE</b>	Pennsylvania
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	19044
<b>PHONE</b>	215 659 3600 ext 103
<b>FAX</b>	215 659 3222
<b>EMAIL ADDRESS</b>	akatz@chernowkatz.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Andrew B. Katz
<b>FIRM NAME</b>	Chernow Katz, LLC
<b>STREET</b>	721 Dresher Road, Suite 1100
<b>CITY</b>	Horsham
<b>STATE</b>	Pennsylvania
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	19044
<b>PHONE</b>	215 659 3600 ext 103
<b>FAX</b>	215 659 3222
<b>EMAIL ADDRESS</b>	akatz@chernowkatz.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1



<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/Andrew B. Katz/
<b>SIGNATORY'S NAME</b>	Andrew B. Katz
<b>SIGNATORY'S POSITION</b>	Attorney for Applicant
<b>DATE SIGNED</b>	01/04/2008

## Trademark/Service Mark Application, Principal Register

**Serial Number: 77364616**

**Filing Date: 01/04/2008**

### To the Commissioner for Trademarks:

**MARK:** QUILTY (Standard Characters, see mark)

The literal element of the mark consists of QUILTY.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Global Tissue Group, Inc., a corporation of New York, having an address of

1101 Lakeland Avenue

Bohemia, New York 11716

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 016: consumer and industrial paper products, namely facial tissues, napkins, towels and bathroom tissues

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant hereby appoints Andrew B. Katz of Chernow Katz, LLC

721 Dresher Road, Suite 1100

Horsham, Pennsylvania 19044

United States

to submit this application on behalf of the applicant. The attorney docket/reference number is GTG-007.

Correspondence Information: Andrew B. Katz

721 Dresher Road, Suite 1100

Horsham, Pennsylvania 19044

215 659 3600 ext 103(phone)

215 659 3222(fax)

akatz@chernowkatz.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by

fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Andrew B. Katz/ Date Signed: 01/04/2008

Signatory's Name: Andrew B. Katz

Signatory's Position: Attorney for Applicant

RAM Sale Number: 2366

RAM Accounting Date: 01/07/2008

Serial Number: 77364616

Internet Transmission Date: Fri Jan 04 17:41:02 EST 2008

TEAS Stamp: USPTO/BAS-70.20.255.18-20080104174102003

725-77364616-4008d28aac26b1053908dd61de7

795ba4d-CC-2366-20080104173703755749

QUILTY